

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

Denise Takach,

Plaintiff,

VS.

Michael Lavespere,  
Ventec, Inc., d/b/a Business Data Systems,  
Ventec, Inc., d/b/a Business Data Systems  
Employee Stock Ownership Plan, and

Defendants.

## COMPLAINT

(ERISA Non-Jury)

Plaintiff Denise Takach, by and through her undersigned counsel, complaining of the above-named Defendants would respectfully show unto this Honorable Court the following:

## JURISDICTION AND VENUE

1. Plaintiff Denise Takach is a citizen and resident of Florence County, South Carolina.
2. Upon information and belief, Defendant Michael Lavespere is a citizen and resident of Florence County, South Carolina.
3. Upon information and belief, Defendant Ventec, Inc., d/b/a Business Data Systems (hereinafter “Ventec”) and is a corporation existing pursuant to the laws of the State of South Carolina and whose principal offices are located in Florence, South Carolina.
4. Upon information and belief, Defendant Michael Lavespere is the President and Chief Executive Officer of Defendant Ventec.
5. Upon information and belief, Defendant Michael Lavespere and Defendant Ventec

created the Ventec, Inc., d/b/a Business Data Systems Employee Stock Ownership Plan (“Ventec ESOP”) as a tax-deferred defined-contribution plan for its employees pursuant to 26 U.S.C. §401.

6. Upon information and belief, the Defendant Ventec ESOP Plan is a legal entity subject suit under the Employee Retirement and Income Security Act of 1974 (hereinafter “ERISA”) pursuant to 29 U.S.C. §1132(d).
7. Upon information and belief, Defendant Michael Lavespere and Defendant Ventec are each fiduciaries of the Ventec ESOP Plan.
8. Pursuant to 29 U.S.C. §1132(e), this Court has jurisdiction over Plaintiff’s claims.

#### **FACTUAL ALLEGATIONS**

9. Plaintiff re-incorporates all other allegations herein, where not inconsistent, as if fully set forth herein.
10. Plaintiff Denise Takach was an employee of Defendant Ventec from October 2000 to 2014.
11. Upon information and belief, Defendant Michael Lavespere purchased Defendant Ventec in 2003 and created the Defendant Ventec ESOP in 2003 or 2004.
12. Upon information and belief, Defendant Michael Lavespere is the Trustee and Plan Administrator of the Ventec ESOP Plan.
13. During her employment for Defendant Ventec, Plaintiff Denise Takach became a Plan Participant in the Defendant Ventec ESOP.
14. Upon information and belief, from 2003 until 2010, Defendant Michael Lavespere provided annual ESOP Statements to Plaintiff and other Plan Participants regarding their

interests in the Defendant Ventec ESOP.

15. Upon information and belief, after 2010, Defendants stopped providing Plaintiff and other Plan Participants with annual statements regarding the operation and condition of the ESOP.
16. Beginning in 2015, Plaintiff attempted to communicate with Defendant Michael Lavespere regarding Plaintiff's interest in the Ventec ESOP Plan.
17. In 2018, Plaintiff met with Defendant Michael Lavespere, and Defendant Lavespere verbally refused to honor Plaintiff's claim for benefits under the terms of the Ventec ESOP Plan.
18. Defendants Michael Lavespere and Ventec failed to respond to Plaintiff's requests for documents and other information regarding Plaintiff's interest in the Ventec ESOP Plan.
19. As a direct and proximate result of Defendants' failure and/or refusal to communicate with Plaintiff as a Plan beneficiary, Plaintiff has been forced to file this suit to obtain plan information and to seek benefits due under the terms of the Ventec ESOP Plan.

**FOR A FIRST CAUSE OF ACTION**

**Plaintiff's Claim for Relief for Defendants' Breach of Fiduciary Duty,  
pursuant to 29 U.S.C. §1132(a)(2) and 29 U.S.C. §1109**

20. Plaintiff re-incorporates all other allegations herein, where not inconsistent, as if fully set forth herein.
21. Pursuant to 29 U.S.C. §1132(a)(2), Plaintiff seeks appropriate relief under 29 U.S.C. § 1109 for Defendants' breach of fiduciary duty.
22. Plaintiff is informed and believes that Defendants Michael Lavespere and Ventec have violated the "Prudent Man Standard of Care" codified at 29 U.S.C. §1104 in their

administration and the operation of the Defendant Ventec ESOP.

23. Plaintiff is informed and believes that she is entitled to benefits under the terms of the Ventec ESOP but cannot determine the value of her benefits because Defendants have failed to provide information in response to Plaintiff's requests.

**FOR A SECOND CAUSE OF ACTION**

**Claim for Administrative Penalties pursuant to 29 U.S.C. §1132(a)(1)(A); 29 U.S.C. §1132(c)**

24. Plaintiff re-incorporates all other allegations herein, where not inconsistent, as if fully set forth herein.
25. In violation of 29 U.S.C. §1132(c), Defendants Michael Lavespere, Ventec, and the Ventec ESOP have failed and/or refused to comply with Plaintiff's requests for information regarding Plaintiff's interest in the Ventec ESOP Plan.
26. Pursuant to 29 U.S.C. §1132(a)(1)(A), Plaintiff seeks the penalty described in 29 U.S.C. §1132(c)(1) in the amount of \$100 a day from the date of Defendants' failure or refusal to provide the requested information to Plaintiff.

**FOR A THIRD CAUSE OF ACTION**

**Injunctive Relief, Pursuant to 29 U.S.C. § 1132(a)(3)**

27. Plaintiff re-incorporates all other allegations herein, where not inconsistent, as if fully set forth herein.
28. Pursuant to 29 U.S.C. §1132(a)(3), Plaintiff seeks an injunction from this Court directing Defendants to produce a copy of the Ventec ESOP Plan, accounting records regarding the current condition of Defendant Ventec and the Defendant Ventec ESOP, and all other information material to Plaintiff's claims for benefits under the terms of the Ventec ESOP Plan.

29. Pursuant to 29 U.S.C. §1132(g), Plaintiff also respectfully requests that the court grant Plaintiff's attorneys fees and costs.

**WHEREFORE**, Plaintiff Denise Takach prays for judgment directing Defendants to provide the requested documents so and to pay Plaintiff all benefits due her under the terms of the Ventec ESOP Plan.

Respectfully Submitted,

s/John R. Peace

John R. Peace, Esq.

PO Box 8087

1225 S. Church Street

Greenville, SC 29604-8087

Ph- (864) 298-0500

Fax- (864) 271-3130

**Attorney for Plaintiff Denise Takach**

October 16, 2019